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EXAMINER

SUHOL, DMITRY

ART UNIT

PAPER NUMBER

3712

DATE MAILED: 08/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/820,081

Applicant(s)

FURRY, MICHAEL E.

Examiner

Dmitry Suhol

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-24, 32 and 34-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-24, 32 and 34-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☒ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1-59, the structural features encompassed by the phrase "pronunciation symbol" can't be determined. Rendering the claim indefinite. The applicant has failed to clearly define structural features that make a "pronunciation symbol" different from a letter of the alphabet.

Regarding claims 38 and 40, it is not clear as to how many names a character has, since the claim reads "one or more characters" thereby able to have only one character but then reads "having respective character names" implying that there is more than one character". It is further not understood how there can be multiple subsets of names if there is only one character.

Regarding claim 34, the phrase "and/or" is not a positive limitation.

The remainder of the action considers the claims as best understood.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7, 15, 23, 32, 38-40, 42, 47, 55 are rejected under 35 U.S.C. 102(b) as being anticipated by Bitner. Bitner discloses a language learning system containing all the elements of the claims including with reference to claims 7, 38 and 40, a language learning device (considered to be a deck of cards) configured to display one or more characters having respective character names selected from a first set of character names (figs. 4-30) where it is considered that “ a first subset of character names” is directed to figs. 4-24 and 26-29. Each character name being designed to teach a student a pronunciation for at least one of a letter or letter combination contained within a character name (figs. 4-29) where as seen in the figures a character (element 3) teaches the pronunciation for a letter (element 2). A pronunciation symbol is read onto element 5 as shown in the figures. A second subset of character names is read on to figs. 25 and 30 where the character names include only the letters introduced in the first or second subset. The plurality of targets as required by claim 39 are read onto figures 2-3 where it is considered that figure 3 is a target corresponding to a first subset and has an associated word “SMART”, while figure 2 corresponds to a second subset and has an associated word “alphanumeric”. A plurality of character regions as required by claim 42 is considered the character region of each card as shown in figs. 4-30. Learning device being a card as required by claim 47 is shown in figs. 4-30. Each

character name beginning with a phoneme associated with a character as required by claim 55 is depicted in figures 4-30.

Claims 7, 11, 40 and 43-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Levin. Levin discloses a language learning system incorporating toy blocks (figs. 3-4) as required by claim 43, where fig. 4 clearly shows a character and a letter included on adjacent sides of the block as required by claim 44. A character is disclosed in figure 4 as a cat. The pronunciation symbol as required by claim 40 is read onto the letters above the character and a first subset is considered to be "cat" and a second subset is considered to be "rat".

Claims 7, 16, 40 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Dillon. Dillon discloses a language learning system containing all the elements of the claims comprising a doll as required by claim 48 (fig. 1). Regarding claim 40, the characters are read onto elements 38, 36, and 40. A pronunciation symbol is read onto the symbols located beneath the characters 36, 38 and 40 where a first subset of character names is considered to be an organ and a dog and a second subset is considered to be a zebra. The letters are read onto elements in tray 14 of figure 1.

Claims 7, 19-22, 40 and 51-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Marcus et al. Marcus discloses all the elements of the claims including a computerized learning device (col. 3, lines 41-59) configured to display a character and

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a letter contained within a character name (col. 3, lines 4-14), a speaker configured to emit an audio signal containing a pronunciation corresponding to a phoneme of a character and letter on display as required by claim 52 (element 26 and col. 9, line 28-33), a visual target for a user to spell as required by claim 53 (col. 9, lines 23-26), a selector being a block as required by claim 54 (col. 3, lines 4-14 and elements 20).

Since the references include all of the structural elements of the claims they are presumed to be inherently capable of all of the claimed functions.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 40-41 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips in view of Hill. Phillips discloses a language learning device containing most of the elements of the claims including with reference to claim 40 a language learning device configured to display one or more characters (elements 22) having respective character names selected from a first set of character names (fig. 1) where it is considered that "a first subset of character names" is directed to the names of cat and dog. Each character name being designed to teach a student a pronunciation for at least one of a letter or letter combination contained within a character name (fig. 1)

where as seen in the figures a character (element 22) teaches the pronunciation for a letter (element 20). A second subset of character names is read on to fig. 1 where it is considered that " a second subset of character names" is directed to the names of boat and fish therefore the character names include only the letters introduced in the first or second subset. A wheel/disk shaped selector as required by claim 41 and 50, are disclosed in figure 1.

Phillips lacks the teaching of a pronunciation symbol, however Hill discloses a language learning device which teaches a plurality of wheels incorporating a pronunciation symbol (col. 3, lines 51-64) where the colored letters are in themselves pronunciation symbols. Therefore it would have been obvious to one having ordinary skill in the art to incorporate the "pronunciation symbol" teachings of Hill into the system of Phillips.

Claims 7, 13-14, 17, 40, 45-46 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bello-Bridick. Bello-Bridick discloses a language learning system containing most of the elements of the claims comprising a vessel (fig. 1) as required by claim 45. A character is disclosed in fig. 6 and letters contained within a character name are disclosed in figure 1. The pronunciation symbols required by claim 40 are read onto the symbols on band 14 shown in figure 1. A first subset of character names is considered to be the house, while a second subset of character names is considered to be the lamb both of which are depicted in figure 6 (as required by claim 40). A cone shaped selector, as required by claim 49, is clearly shown in figure 2. Since

the bands that the letters and characters are located on can be turned it would have been obvious to position the bands with opposite sides containing a character and a letter (as required by claim 46) in the character name for the purpose of teaching a child the alphabet by having the child identify a letter corresponding to a character name before actually seeing the letter.

Claim 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levin in view of Mitchell. Levin, as stated above, discloses most of the elements of the claims but for a letter being printed on a body of a character as required by claim 56. However Mitchell discloses educational blocks like that of Levin which teach a letter being printed on a body of a character (figs. 1-2). Therefore it would have been obvious to have a letter being printed on a body of a character in the device of Levin for the purpose of interest to the consumer.

Claim 12 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levin. Although Levin discloses most of the elements of the claims as stated above the reference fails to teach a letter and a pronunciation symbol positioned on a first side of a block and a character positioned on a second side of a block as required by claim 12 and a letter and pronunciation symbol printed on a character as required by claim 24. However, it is considered that the positioning of the respective characters, letters and pronunciation symbols is an obvious choice of design in that the applicant discloses no advantage or critical need for such an arrangement.



Claims 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bitner. Although Bitner discloses the creation of all of the structural features as stated above, the reference does not explicitly teach presenting the characters to students however the act of presenting the device of Bitner is obvious since the device is rendered useless without the act of presentation to students/users of the device.

***Allowable Subject Matter***

Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Claims 2-6, 8-9 and 57-59 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1-59 have been considered but are moot in view of the new ground(s) of rejection. However it should be pointed out that the 112 rejections based on the term "pronunciation symbol" has not been reversed. It is the position of the examiner that the applicants have not shown a distinctness between a

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letter of the alphabet and a pronunciation symbol. The drawings show a variety of letters which are called "pronunciation symbols" by the applicants therefore it becomes unclear as the difference between the two.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 703-305-0085. The examiner can normally be reached on Mon - Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone numbers

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for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

A handwritten signature in black ink, appearing to read 'DHB', is written over a horizontal line.

ds  
August 10, 2002

**DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700**